



Michael R. Pence, Governor
State of Indiana

Division of Disability and Rehabilitative Services
402 W. WASHINGTON STREET, P.O. BOX 7083
INDIANAPOLIS, IN 46207-7083
1-800-545-7763

To: Division of Disability and Rehabilitative Services stakeholders
From: Theresa Koleszar, Director, Bureau of Rehabilitation Services (BRS)
Re: Workforce Innovation and Opportunity Act - Section 511 Overview and FAQ
Date: September 8, 2016

On July 22, 2014, Congress passed the Workforce Innovation and Opportunity Act (WIOA), which amended several provisions of Rehabilitation Act of 1973 (Rehab Act). Among those changes, WIOA added Section 511 to the Rehabilitation Act that prohibits entities that hold special wage certificates under 14(c) of the Fair Labor Standards Act (FLSA) from employing individuals with disabilities at sub-minimum wage unless certain conditions are met. Effective July 22, 2016, a 14(c) entity cannot employ individuals with disabilities who are age 24 or younger, or continue to employ individuals with disabilities at a subminimum wage rate regardless of their age, unless the 14(c) entity has received documentation that the individuals with disabilities have completed certain requirements.

Section 511 describes various responsibilities of individuals with a disability, 14(c) entities, local or State educational agencies, and designated State units (DSU) in completing and documenting these service-related requirements.

Section 511 does NOT: change the purpose of the Rehabilitation Act, promote subminimum wage employment, eliminate sheltered workshops or eliminate subminimum wage.

With the Final Rule's¹ publication, many questions have been raised to clarify expectations and promote compliance. To that end, below are several commonly asked questions that include responses based on currently available information. The Bureau of Rehabilitation Services will issue additional information as it becomes available.

Limitations on Subminimum Wage

1.) What is the purpose of the implementing regulations for Section 511?

The purpose of the implementing regulations "is to set forth requirements the designated State units and State and local educational agencies must satisfy to ensure that individuals with disabilities, especially youth with disabilities, have a meaningful opportunity to prepare for,

¹ The final regulations are available online at <https://www.gpo.gov/fdsys/pkg/FR-2016-08-19/pdf/2016-15980.pdf>



obtain, maintain, advance in, or regain competitive integrated employment, including supported or customized employment.” (34 CFR 397.1(a)).

2.) Who is the designated State unit?

In Indiana, the designated State unit is the Indiana Bureau of Rehabilitation Services, which houses the Vocational Rehabilitation (VR) program.

3.) Who are the State and local educational agencies?

The State educational agency is the Indiana Department of Education and the local educational agencies are local school districts.

4.) When are section 511 requirements effective?

The effective date for section 511 requirements was July 22, 2016.

Limitations for Youth with Disabilities Seeking Employment at Subminimum Wage

1.) What is VR’s responsibility to youth with disabilities who are known to be seeking employment at a subminimum wage?

VR is responsible for providing youth with a disability, documentation upon the completion of the following activities:

- a. Pre-employment transition services or transition services; and
- b. Application for vocational rehabilitation services and received a determination that the youth with a disability is:
 - i. Ineligible for VR services; or
 - ii. Eligible for VR services;
 1. Has an approved individualized plan for employment (IPE) with a specific employment goal consistent with competitive, integrated employment; and
 2. Has been unable to successfully achieve the employment outcome despite receiving reasonable accommodations and appropriate supports for a reasonable period; and
 3. The case record has been closed; and
- c. Career counseling and information and referrals to other programs and resources that offer employment-related services that enable support toward competitive integrated employment. Career counseling and information and referral must:
 - i. Be provided by VR in a manner that promotes informed choice and decision-making;
 - ii. Not be for or result in employment or compensation at a sub-minimum wage; and
 - iii. Be provided within 30 calendar days of being determined ineligible for VR services or case closure.

2.) What is required of youth with disabilities who are seeking employment at a subminimum wage?

Youth with disabilities seeking subminimum wage employment after July 22, 2016, must present the documentation that they receive from VR indicating that they completed pre-employment transition services or transition services; and that they were found ineligible for VR services or that they were found eligible, but their case was closed due to being unsuccessful in achieving the employment outcome identified in their IPE; and that they have received career counseling and information and referral services.

3.) Who is a youth with a disability? Who is a student with a disability?

A youth with disability is an individual with a disability at least 14 years of age and not older than 24 years of age.

“Students with disabilities” include individuals with a disability in a secondary, postsecondary or other recognized education program between the ages of 14 and 22 and receiving special education services. Students with disabilities also include individuals with a disability for purposes of section 504.

4.) What are pre-employment transition services? How are they provided?

Pre-employment transition services are only available to students with disabilities. Pre-employment transition services include job exploration counseling; work-based learning experiences provided to the maximum extent possible in an integrated, community setting; counseling on transition or postsecondary education programs at institutions of higher education; workplace readiness training to develop social and independent living skills; and instruction in self-advocacy, including peer mentoring.

VR provides several pre-employment transition services to students with disabilities who apply for services with the VR program through its discovery services, job readiness training, work experiences, Project Search, and other similar service options.

In addition, beginning in October 2016, students with disabilities within certain school districts may receive pre-employment transition services without the need to apply for the VR program. The Bureau of Rehabilitation Services has contracted with nine Community Rehabilitation Programs to offer these services. More information about this will be forthcoming.

5.) How are transition services provided?

Transition services are provided to students who receive special educational or related services in accordance with their individualized education program (IEP) from their school. VR and the Indiana Department of Education (IDOE) are in communication regarding documentation requirements for youth with disabilities who are known to be seeking subminimum wage employment. IDOE is also planning to issue guidance to schools.

6.) When must VR provide documentation to the youth with a disability?

VR must transmit documentation of the determination or action(s) to the youth with a disability, as soon as possible, but no later than 45 calendar days upon either making a determination or completing each of the required actions. In the case of extenuating circumstances like unexpected, lengthy absences due to illness or natural disaster, the deadline can be extended to 90 calendar days from the date of

determination or action. VR is working on a process for providing this documentation to youth with disabilities in a timely manner and will be training VR staff on the process in the upcoming months. Additional information will be forthcoming.

7.) What happens if a youth with a disability refuses to participate in the required activities?

If a youth with a disability refuses to participate, he or she cannot seek subminimum wage employment and VR must provide the youth with documentation within 10 days of the refusal.

8.) What are the responsibilities of 14(c) entities to youth with disabilities who are seeking employment at a sub-minimum wage?

Beginning on July 22, 2016, an entity holding a 14(c) special wage certificate may not employ a youth with a disability at a subminimum wage unless the youth has provided the entity documentation that they completed pre-employment transition services or transition services; that they were found ineligible for VR services or that they were found eligible, but their case was closed due to being unsuccessful in achieving the employment outcome identified in their IPE; and that they have received career counseling and information and referral services. Once employed by an entity, the youth with a disability is subject to the requirements for individuals with disabilities of any age who are employed at subminimum wage.

Limitations for Individuals with Disabilities of Any Age Seeking Employment at Subminimum Wage

1.) What is the designated State unit's responsibility to individuals with disabilities of any age who are working at a subminimum wage?

VR is required to provide career counseling and information and referral services, to individuals with disabilities, regardless of age, or their representatives, who are known by VR to be employed by an entity at a subminimum wage. The career counseling and information and referral services must be offered in a way that is understandable to the individual and supports independent decision-making and informed choice regarding competitive, integrated employment. **VR will prioritize providing career counseling to individuals who entered subminimum wage employment on or after July 22, 2016**, to meet federally required timelines. For individuals hired at subminimum wage on or after July 22, 2016, career counseling and information and referral services must be carried out once every six months for the first year of the individual's subminimum wage employment and annually thereafter for the duration of such employment. Individuals employed at a subminimum wage prior to July 22, 2016, must receive career counseling and information and referral services once by July 22, 2017, and annually thereafter. VR will provide individuals with disabilities who are employed at subminimum wage documentation upon completion of the required career counseling and information and referral services.

2.) How does an individual with a disability become known to VR to be working at subminimum wage?

An individual can become known to VR through his or her involvement in the VR process, through self-referral or referral from a third party.

3.) How frequently must VR provide career counseling and information and referral to individuals with disabilities working at subminimum wage?

Individuals who entered employment at a subminimum wage on or after July 22, 2016, must receive career counseling and information and referral services once every six months for the first year of employment and annually thereafter. Therefore, **VR will prioritize providing career counseling and information and referral services to those individuals who entered subminimum wage employment on or after July 22, 2016.** Individuals employed at a subminimum wage prior to July 22, 2016, must receive career counseling and information and referral services once by July 22, 2017, and annually thereafter.

4.) Are there documentation requirements for career counseling and information and referrals?

Upon completion of required activities, VR is to provide the individual with documentation as soon as possible, but no later than 45 calendar days or 90 calendar days in extenuating circumstances.

5.) What happens if an individual with a disability refuses to participate in the required activities?

If an individual with a disability refuses to participate, VR must provide the individual with documentation within 10 days of the refusal.

6.) What are the responsibilities of 14(c) entities to individuals with disabilities of any age who are employed at subminimum wage?

If an individual with a disability, regardless of age, wants to maintain his or her employment at subminimum wage with a 14(c) entity, he or she must obtain career counseling and information and referral services from VR.

In addition to the Department's Final Rule, the United States Department of Labor has issued separate guidance for entities regarding implementation of Section 511, which is available at https://www.dol.gov/whd/FieldBulletins/fab2016_2.htm.

7.) Can the required documentation be transmitted to parties other than the youth with a disability or individual with a disability?

VR must retain copies of all required documentation that is provided to an individual or youth with a disability. VR has an obligation under federal regulations and state law to protect all personal information within its possession. VR will not disclose any information to any other person or entity unless VR has obtained the written and signed consent of the youth with a disability, the individual with a disability or the youth or individual with a disability's representative.